

2018-2019 Main Estimates

THE CANADA BORDER SERVICES AGENCY ASSESSMENT AND REVENUE MANAGEMENT (CARM) PROJECT

PROPOSED RESPONSE:

- **The Canada Border Services Agency Assessment and Revenue Management (CARM) system will modernize CBSA's assessment and revenue management of duties and taxes on commercial imports into Canada.**
- **Once fully implemented, CARM will reduce administrative burden for importers and other trade partners, and enhance the ability of small and medium-sized businesses to view and manage their accounts online.**
- **The CARM project will improve the Agency's tax revenue accounting and reporting systems.**
- **Finally, CARM will increase the transparency of the Agency's processes and improve the integrity of the information reported. This, in turn, will enhance compliance efforts.**
- **The CBSA received \$21.1 million* in the 2017-2018 Supplementary Estimates C and is requesting \$42.6 million* in the 2018-2019 Main Estimates for the design stage of the CARM project.**

(*Does not include employee benefit plan, Public Services and Procurement Canada accommodations costs, Shared Services Canada costs or HST).

Backgrounder:

In 2017-2018, the Canada Border Services Agency (CBSA) received authorities to increase its reference levels by an additional \$63.7 million over 2 fiscal years for the Design Stage of the CARM project.

The delivery model that will be used for CARM is innovative, involving collaboration with the private sector.

The project has multiple phases. The first phase of the CARM project, the Accounts Receivable Ledger was implemented in January 2016. The Expenditure Authority and Contract Authority for the second phase of CARM (Design Stage) was approved in November 2017.

The vendor that will help design the remainder of CARM was selected after a two year competitive collaborative procurement process, conducted by the CBSA in partnership with PSPC, and informed by lessons learned from past procurements.

On February 7, 2018, the CARM Design Stage contract was awarded to Deloitte, Inc. As the winning vendor, Deloitte will be responsible for executing the CARM Design Stage according to the terms of the CARM contract, a priority outlined in the Departmental Plan (pg.11).

It is planned that the CARM Design Stage will be completed within 12 months of Task Authorization approval by PSPC.

Implementation timelines for the remainder of CARM will be determined during the CARM Design Stage.

CONTACTS:

Prepared by
 Omar Subhani, A/Director
 General, CARM

Tel. no.
 343-291-6293

Approved by
 Lisa Anawati, Vice-President,
 CARM

Tel. no.
 (613) 960-6596

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ENTRY/EXIT INITIATIVE

PROPOSED RESPONSE:

- **Unlike many countries, Canada does not currently collect exit information, which means we cannot be sure who remains in the country and for how long.**
- **Bill C-21 will enable the Canada Border Services Agency to collect basic information, similar to what is on page 2 of a passport, about all persons leaving Canada by land or air.**
- **I want to thank the Committee for its thorough work in studying the legislation last fall. I understand debate of this bill in the House is due to resume in the nearfuture.**
- **This new measure will enhance our ability to track Amber Alerts, combat human trafficking, and prevent people from travelling overseas to join terrorist groups. It will also allow immigration authorities to know when someone who is here illegally has left the country.**
- **At land ports of entry, Canada and the United States currently collect and exchange basic biographic information on third-country nationals. Canada also shares with the United States information about US citizens.**
- **In the land mode, entry into one country serves as an exit record from the other.**
- **The Agency is seeking \$10.3 million* in the 2018-2019 Main Estimates for the acquisition and ongoing maintenance of systems and technology required to collect, analyse, use, store and disclose exit information.**

(*Does not include employee benefit plan, Public Services and Procurement Canada accommodations costs, Shared Services Canada costs or HST).

Backgrounder:

On June 30, 2013, the Government of Canada implemented measures to collect exit information for third-country nationals (non-citizens) and permanent residents at all automated land border Ports of Entry (POE). The information exchanged between Canada and the United States (US) is biographic information only, found on page 2 of a passport, and is limited to the information strictly necessary to accurately match an entry and exit record to a traveller.

Once fully implemented, the collection of exit information at the land border will be seamless and done through an electronic exchange of biographic entry information with the US, such that a record of entry into one country is used as a record of exit from the other. In the air mode, the CBSA will collect air exit information from air carriers. This information would not be shared systematically with the US.

The CBSA has engaged the Office of the Privacy Commissioner (OPC) to discuss how best to ensure the protection of personal information collected under Entry/Exit. Through both Privacy Impact Assessments, and consultations with the OPC, the CBSA is addressing concerns and implementing recommendations, such as the posting of signage at land border crossings to advise affected travellers that information will be collected and shared with the US.

Using *Customs Act* authorities, CBSA will collect information under the Entry/Exit initiative and disclose it to the following federal partners:

- Immigration, Refugees and Citizenship Canada, to enhance immigration program integrity (i.e. determine compliance with residency obligations and citizenship revocation investigations).
- Royal Canadian Mounted Police, on a case-by-case basis when the name of a known individual is matched against traveller information, including pre-departure airline manifests.
- Canadian Security Intelligence Service on a case-by-case basis, when the name of a known individual is matched against inbound and outbound traveller information, including pre-departure airline manifests.
- Employment and Social Development and the Canada Revenue Agency, for the purpose of administering benefits programs which have residency requirements.

In the global context, exit information is collected on a regular basis. Our closest international partners either already have some format of exit information collection, or are moving to implement such a system. The US, United Kingdom, Australia, and New Zealand all have exit systems and key European Union member states have or are in the process of implementing similar programs.

Overall, the CBSA received \$108.2 million over 5 years and \$10.3 million in ongoing funding to develop the systems and technology required to allow the Agency to collect, analyse, use, store and disclose exit information on all persons. The Agency is seeking \$10.3 million in the 2018-2019 Main Estimates for ongoing maintenance requirements for the Entry/Exit information system including radio frequency identification technology.

On October 30, 2017, the Standing Committee on Public Safety and National Security reported Bill C-21, *An Act to Amend the Customs Act*, back to the House of Commons, amending the data retention period to 15 years for exit information. As outlined in the Departmental Plan (pg.10) the Agency will continue to support legislative amendments to the *Customs Act* (Bill C-21), enabling full implementation of the Entry/Exit initiative.

CONTACTS:

Prepared by
Sébastien Aubertin-Giguère

Tel. no.
(613) 952-3266
(613) 614-4715

Approved by
Peter Hill, A/Vice-President,
Programs Branch

Tel. no.
(613) 952-2531

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TEMPORARY FOREIGN WORKER PROGRAM

PROPOSED RESPONSE:

- **The Temporary Foreign Worker Program and International Mobility Program allow employers to hire foreign nationals on a temporary basis.**
- **In collaboration with Employment and Social Development Canada and Immigration, Refugees and Citizenship Canada, the Canada Border Services Agency (CBSA) investigates cases of suspected employment fraud related to these programs.**
- **CBSA's investigators focus primarily on the organizers of complex cases of fraud, such as employers or consultants suspected of multiple offences.**
- **The CBSA is requesting \$6.5 million* in the 2018-2019 Main Estimates for criminal investigation activities to support program integrity and prevent the exploitation of temporary foreign workers.**

(*Does not include employee benefit plan, Public Services and Procurement Canada accommodations costs, Shared Services Canada costs or HST).

Backgrounder:

In administering the Temporary Foreign Worker and International Mobility programs, the Canada Border Services Agency (CBSA) determines the admissibility of individuals seeking entry to Canada, issues permits at ports of entry and ensures that all persons seeking entry to Canada meet the requirements to enter, work and/or stay in Canada. The CBSA also investigates and pursues the criminal prosecution of persons who commit border-related offences.

When CBSA becomes aware of possible criminal contraventions of the *Immigration and Refugee Protection Act* (IRPA), the Agency gathers supporting evidence and takes appropriate actions, such as launching criminal investigations or prosecutions.

Criminal investigators focus on complex cases of fraud, aimed primarily at the organizers, facilitators and perpetrators of fraud (i.e. employers or consultants that wilfully contravene IRPA). Complex cases of fraud are those that go beyond a single incident, often requiring follow-up investigation or use of specialized investigative techniques (i.e. search warrants) to gather evidence to support the investigation and prosecution of the offence or previous offence(s). The CBSA investigates cases of suspected employment fraud under IRPA.

Employers who employ “a foreign national in a capacity in which the foreign national is not authorized to be employed (s. 124)” can be fined up to \$50,000 and imprisoned for up to two years, or both.

Employers who intentionally misrepresent or withhold information or provide false information to contravene the IRPA (i.e. lie on their Labour Market Impact Assessment application about their efforts to hire Canadians) can be fined up to \$100,000 and imprisoned for up to five years or both.

The \$6.5 million in funding being sought through the 2018-2019 Main Estimates is directly aligned to Budget 2017 commitments to strengthen program compliance within the Temporary Foreign Work and International Mobility Programs. This funding forms part of a government-wide effort led by Employment and Social Development Canada (in collaboration with IRCC and CBSA) which is seeking \$167.8 million* in total from 2017-2018 to 2019-2020.

(*Does not include employee benefit plan, Public Services and Procurement Canada accommodations costs, Shared Services Canada costs or HST).

CONTACTS:

Prepared by
Anders Sorensen

Tel. no.
613-952-2778

Approved by
Peter Hill
A/Vice-President
Programs Branch

Tel. no.
613-952-2531

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EXAMINATION OF ELECTRONIC DEVICES

PROPOSED RESPONSE:

- **The Canada Border Services Agency (CBSA) is committed to respecting privacy rights while protecting the safety and security of Canadians.**
- **Canadian border services officers do not examine electronic devices as a matter of routine. Officers must have a multiplicity of indicators before examining an electronic device.**
- **CBSA officers can compel travellers to provide passwords to examine data stored directly on the device, but do not access or seek passwords for information stored either remotely or online, such as social media accounts.**
- **In line with the CBSA's commitment to enhance transparency, the Agency is tracking the frequency at which travellers have their electronic devices examined at the border, since November 2017. Every six months, the CBSA will provide a report to the Office of the Privacy Commissioner.**

Background:

Electronic goods have always been subject to the same reporting requirements as other types of goods crossing the border. The constitutionality of warrantless border examinations of electronic devices has been upheld by the courts.

Paragraph 99(1) (a) of the *Customs Act* gives Border Services Officers the authority to examine “goods” (including electronic goods) at the border for customs-related purposes. In this context, “goods” are defined in section 2(1) of the Act to include “any document in any form” and therefore encompasses electronic documents.

The Agency examines electronic goods in line with the June 2015 Operational Bulletin entitled “Examination of Digital Devices and Media at the Port of Entry – Guidelines”. It provides guidance on a Border Services Officer’s authorities when examining digital devices or media at ports of entry, explains limitations to those authorities, and sets out guidelines on when such examinations should and may be performed.

Examinations of digital devices and media are performed during an examination, with a clear link to the administration or enforcement of its mandated program legislation governing the cross-border movement of people and goods.

Individuals also have the obligation under section 13 of the *Customs Act* to present and open their goods if requested to do so by a BSO. Because a password can be required to open and examine documents on an electronic device, it can be compelled to allow for the travellers’ obligations to be fulfilled. Failure to provide a password can result in the detention or seizure of the electronic device. Charges can also be laid for failing to comply with *Customs Act* obligations.

The examination of electronic goods uncovers customs-related offences ranging from undervalued or undeclared goods, to the interception of prohibited goods contained within the devices themselves (child pornography, obscenity, etc.).

The retention and the collection of any documents, electronic or otherwise, must comply with any parameters set by the Act under which it was collected (e.g. the *Privacy Act*, *Customs Act*, *Immigration and Refugee Protection Act*, *Customs Tariff*), while ensuring that the information is available for the duration of any applicable appeal period. As a baseline, section 4 of the *Privacy Regulations* indicate that personal information used for an administrative purpose must be retained for a period of at least two years.

The commitment to provide a bi-annual report on the number of times electronic devices examined by CBSA officers was made on September 27, 2017, during the meeting of the Standing Committee on Access to Information, Privacy and Ethics (ETHI) on *Privacy of Canadians at Airports, Borders and Travelling in the United States*. Further to the Committee’s report and recommendations, the CBSA reaffirmed its commitment in the Government’s response.

CONTACTS: Prepared by: Sébastien Aubertin-Giguère,	Tel. no. (613) 952-3266 (613) 614-4715	Approved by Peter Hill, A/Vice-President, Programs Branch	Tel. no. (613) 952-2531
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MULTI-YEAR IMMIGRATION LEVELS PLAN

PROPOSED RESPONSE:

- Under the 2018-2020 Multi-Year Levels Plan for immigration, the Government of Canada maintains its commitment to a strong immigration program and will welcome 310,000 immigrants in calendar year 2018.
- The role of the Canada Border Services Agency under this immigration plan is to undertake security screening abroad, admissibility determinations, and the processing of both travellers and goods at Ports of Entry.
- The Agency is also mandated to conduct enforcement activities inland, for those who become ineligible to hold permanent resident status.
- The CBSA is requesting \$42.6 million* in the 2018-2019 Main Estimates to increase capacity so that it can keep fulfilling its mandate as Canada continues welcoming new arrivals from around the world.

(*Does not include employee benefit plan, Public Services and Procurement Canada accommodations costs, Shared Services Canada costs or HST).

Backgrounder:

Immigration, Refugees and Citizenship Canada (IRCC) is the lead department for Canada's Immigration Programs, including the resettlement of refugees and the development of target immigration levels that are presented to Parliament as part of the "*Annual Report to Parliament on Immigration*".

Multi-year plans enable federal partners to better adapt to operational priorities and requirements.

The CBSA's role in administration and enforcement of Canada's Immigration Program includes:

- security screening to inform IRCC officer decisions on the issuance of visas;
- verification of identity and assistance to partners prior to a Permanent Resident (PR) coming to Canada (e.g. airlines, local authorities and airports);
- processing of new PRs when they arrive at a Canadian port of entry (POE) through verification of applicant identity and compliance with legislative and regulatory requirements for admissibility to Canada; and
- immigration enforcement within Canada, including investigations, detentions and potential removals of individuals who are deemed inadmissible pursuant to the *Immigration and Refugee Protection Act* (IRPA).

The CBSA currently receives baseline funding to process up to 300,000 permanent resident landings per year. The annual PR target is 310,000 individuals in 2018, 330,000 in 2019 and 340,000 in 2020 and beyond.

Through the 2018-2019 Main Estimates, the CBSA is requesting \$42.6 million for activities related to the 2018-2020 Multi-Year Levels Plan, including immigration security screening, border processing, inland enforcement and intelligence, and force generation.

CONTACTS:

Madona Radi,
Director

Tel. no.
613-954-6319

Approved by
Peter Hill, A/Vice-President
Programs Branch

Tel. no.
Office: 613-952-2531

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IMMIGRATION DETENTION

PROPOSED RESPONSE:

- Immigration detention is a measure of last resort and used only in limited circumstances, such as those where there are serious concerns about a danger to the public, a flight risk or a person's identity, and only after alternatives to detention are first considered.
- The overall number of people in immigration detention in Canada has gone down almost 30% in the last five years, and the average length of detention is also decreasing.
- By implementing the \$138 million National Immigration Detention Framework, CBSA is strengthening the detention program. The mental health and well-being of detainees and the safety and security of Canadians are the primary considerations.
- The CBSA is requesting \$39.8 million* in the 2018-2019 Main Estimates which will provide for:
 - national availability of expanded alternatives to detention;
 - significantly improved conditions in holding centres;
 - improved access to medical and mental health services; and
 - further reducing the detention of minors

(*Does not include employee benefit plan, Public Services and Procurement Canada accommodations costs, Shared Services Canada costs or HST).

- In the words of the United Nations High Commissioner for Refugees: "By and large, the Canadian system remains exemplary worldwide."

Minors in detention:

- In the fall, we announced a new directive that includes the best interests of the child as a primary factor in detention decisions affecting families.

International comparisons:

- There is no maximum length for detention in the UK or Australia, and the caps in the US and New Zealand are subject to several exceptions.

Background: (On the National Immigration Detention Framework)

The Canada Border Services Agency (CBSA) works to ensure that it is exercising responsibility for detentions to the highest possible standards, with the physical and mental health and well-being of detainees, as well as the safety and security of Canadians, as primary considerations. Detainee rights are guaranteed by the Canadian Charter of Rights and Freedoms. Individuals who are detained for immigration purposes are protected from arbitrary arrest and detention and have access to effective remedies. Canada does not detain asylum seekers simply because they make a claim for protection.

CBSA officers detain foreign nationals and permanent residents when there are reasonable grounds to believe the person is inadmissible to Canada and is:

- a danger to the public;
- unlikely to appear (flight risk) for immigration processes;
- unable to satisfy the officer of their identity (foreign nationals only);
- upon entry, to complete an immigration examination; or,
- designated, as part of an irregular arrival, by the Minister of Public Safety (16 years of age or older only).

CBSA officers may also detain foreign nationals and permanent residents at a port of entry where there are reasonable grounds to suspect the individual is inadmissible due to security grounds, human rights violations or criminality.

In provinces where there are no Immigration Holding Centres (IHCs) and/or the person presents a higher risk profile or is a public security risk, the CBSA relies on the use of provincial facilities.

On average, there are 300 to 350 individuals detained under the *Immigration and Refugee Protection Act* (IRPA) at any given time in Canada. These make up less than 0.02% of travellers to Canada per year.

Immigration detention is not punitive but exercised to ensure the integrity of the immigration system and public safety. Detention is a last resort and officers must always consider alternatives.

Alternatives to detention (ATD) may include release on reporting conditions, including performance bond; cash deposit; establishment of a bondsperson; or, acceptance into a community supervision program (currently exclusive to the Greater Toronto Area region). An expanded ATD Framework will be launched in spring 2018 and will over time include national Community Case Management and Supervision, Voice Reporting and, in the GTA, Electronic Monitoring on a two-year pilot basis.

A CBSA officer's decision to detain a person under the IRPA is subject to a review by the Immigration and Refugee Board (IRB), an independent quasi-judicial tribunal. Detainees must appear before the IRB within the first 48 hours of being detained. At a detention review, the IRB may release the person or identify conditions for release or determine that detention should continue. If the IRB determines that detention should be continued, the individual must appear in the next seven days and every 30 days thereafter. The Immigration Division of the IRB always provides reasons for its decisions, and its decisions are subject to judicial review with leave from the Federal Court.

The Agency strives to treat all people with the utmost respect and dignity in keeping with its core values of respect and fairness.

On August 15, 2016, the Minister of Public Safety announced an investment of up to \$138 million to transform the immigration detention system in Canada through a new National Immigration Detention Framework (NIDF). As outlined in the Departmental Plan (pg.19), under the NIDF, the CBSA is expanding partnerships, enhancing ATDs and making key investments to improve federal detention infrastructure to align with international and domestic standards. The funding is also being used to enhance medical and mental health services and support for individuals in IHCs.

In keeping with the objective of expanding partnerships and transparency, a series of stakeholder engagement consultations were held, beginning in the summer of 2016. As part of the consultation, in spring 2017, Canadians — including the public, NGOs, academics, and government employees — were invited and encouraged to share their views via Consulting with Canadians, the single-window web access to government consultations. The results of those consultations were made public in November 2017.

Two new infrastructure projects will replace the IHCs in British Columbia and Quebec to reduce the need for the use of provincial correctional facilities for immigration detention, and a significant retrofit of the existing IHC in the Greater Toronto Area (GTA) region will also be undertaken. The CBSA has entered into a 10 year service contract, to 2028, in the GTA region, for the provision of an IHC with an increased capacity to detain medium level and higher risk level detainees, including persons with historical criminality.

Under the NIDF, new funding was provided through the Interim Federal Health Program (IFHP) to expand access to health services to immigration detainees held in IHCs. By 2018, each IHC will offer expanded services through dedicated professional medical staff (i.e. doctor, nurse, psychiatrist and psychologist) available to provide health services on-site 7 days a week.

To support ongoing policy development and improvement, revised Detainee Medical Needs and National Risk Assessment for Detention (NRAD) forms were implemented on February 12, 2018. The NRAD is a risk-based tool that assists CBSA officers with detention placement decisions by providing common indicators and considerations, coupled with a ranking system. The Detainee Medical Needs form documents detainee medical or mental health issues which may require further assessment by medical professionals. Both forms accompany each detainee when they are transferred to an IHC or a provincial correctional facility prior to admittance, and will strengthen national consistency in detention decisions and treatment of detainees.

Detention of Minors

Minors are only detained as a measure of last resort and the best interests of the child are always a primary consideration. On November 7, 2017, a Ministerial Direction was issued to CBSA officers identifying considerations that must be factored into any detention decision that involves a minor or family unit, with the overall objective of reducing the number of minors housed or detained in CBSA facilities as much as possible. The direction was followed by a CBSA National Directive, which further refines the direction into operational protocols and policies. Since its implementation, the Agency has seen an approximately 20% reduction in the number of minors being held in CBSA facilities, with the majority being for less than 48 hours. Policy and regulatory work is underway to significantly further limit the detention of minors and to avoid family separation as much as humanly possible.

Detention Statistics

Since November 2016, the CBSA has been posting statistics related to immigration detention online at <http://cbsa.gc.ca/security-securite/detent-stat-eng.html>. Quarterly statistics for the first three quarters of 2017-2018 have been made public. These include details on minors including their status, age, gender, length of housing/detention and facility type, as well as the average and median length of time in a facility.

CONTACTS:

Prepared by
Leah Campbell, A/Director

Tel. no.
(613) 952-1921

Approved by
Peter Hill, A/Vice-President,
Programs Branch

Tel. no.
(613) 952-2531

Backgrounder: (On the Immigration Holding Centre (IHC) – Surrey, BC location)

The current IHC facility in the Pacific region opened in 2001 and is located in the basement of the Vancouver International Airport (VIA). The 24-bed facility is owned by the Airport Authority. There are a number of significant deficiencies at this facility, including:

- insufficient number of beds to meet requirements in this region;
- a sterile environment with no access to natural light, fresh air or exercise opportunities;
- lack of space for family visits;
- the lack of adequate space for family detention;
- lack of space for meetings with legal representatives or community support groups resulting in the need to transport detainees to the CBSA's downtown offices for meetings; and,
- inadequate access to health care services.

The new IHC will: provide for 70 beds; meet international standards; minimise the need for guard presence; provide ready access to fresh air and outdoor space; and provide visiting space for family members, NGOs and visitors.

CONTACTS:

Prepared by:
Stephen Braham

Tel. no.
(613) 948-9847

Approved by:
Jonathan Moor, Vice-President,
Comptrollership Branch

Tel. no.
(613) 948-8604